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7 **UNITED STATES DISTRICT COURT FOR THE**
8 **EASTERN DISTRICT OF WASHINGTON**

9 TOWNSEND RANCH LLC, a
Washington limited liability corporation;
10 ESTATE OF DAVID TOWNSEND;
EDWARD TOWNSEND; DANIEL
11 TOWNSEND; WILLIAM TOWNSEND;
NATHAN TOWNSEND; MALCOLM
and KELLY TOWNSEND, husband and
12 wife; TOWNSEND BROTHERS LLC, a
Washington limited liability corporation;
and T3 RANCH LLC, a Washington
limited liability corporation,

13 Plaintiffs,

14 v.

15 UNITED STATES OF AMERICA,
acting by and through the
16 DEPARTMENT OF INTERIOR and
BUREAU OF INDIAN AFFAIRS,

17 Defendant.

No.

**COMPLAINT FOR
DAMAGES**

18 Plaintiffs, by and through their undersigned attorneys, for their claims
19 against Defendant, state and allege as follows:
20

1 **I. INTRODUCTION**

2 1.1 In the early morning hours of September 7, 2020, a fire started at the
3 old Omak Mill site in Okanogan County, Washington, eventually erupting into a
4 catastrophic wildfire. The old Omak Mill site contained one or more burn piles of
5 forest and timber scrap (a.k.a. “slash”) which had been long smoldering
6 (hereinafter “smoldering slash pile”) that flared up, resulting in the wildfire.

7 **II. PARTIES AND NON-PARTIES**

8 2.1 At all times material hereto, Plaintiff Townsend Ranch LLC was a
9 corporation organized and existing under the laws of the state of Washington, with
10 is principal place of business in Washington.

11 2.2 After the fire which is the subject of this lawsuit but prior to this
12 litigation, David Townsend, father of the other named plaintiffs, passed away.
13 Edward Townsend has been appointed as the Personal Representative of the Estate
14 of David Townsend in a probate action filed in the Okanogan County Superior
15 Court. At the time of the fire, David Townsend was a resident of and had an interest
16 in real and personal property located in Okanogan County, Washington.

17 2.3 At all times material hereto, Plaintiff Edward Townsend was a
18 resident of and had an interest in real and personal property located in Okanogan
19 County, Washington.
20

1 2.4 At all times material hereto, Plaintiff Daniel Townsend was a resident
2 of Ferry County, Washington, and had an interest in real and personal property
3 located in Okanogan County, Washington.

4 2.5 At all times material hereto, Plaintiff William Townsend was a
5 resident of and had an interest in real and personal property located in Okanogan
6 County, Washington.

7 2.6 At all times material hereto, Plaintiff Nathan Townsend was a resident
8 of and had an interest in real and personal property located in Okanogan County,
9 Washington.

10 2.7 At all times material hereto, Plaintiffs Malcolm Townsend and Kelly
11 Townsend, husband and wife, were residents of and had an interest in real and
12 personal property located in Okanogan County, Washington.

13 2.8 At all times material hereto, Plaintiff Townsend Brothers LLC was a
14 corporation organized and existing under the laws of the state of Washington, with
15 is principal place of business in Washington.

16 2.9 At all times material hereto, Plaintiff T3 Ranch LLC was a
17 corporation organized and existing under the laws of the state of Washington, with
18 is principal place of business in Washington.

1 2.10 Plaintiffs will be referenced hereafter collectively as “Townsend
2 Plaintiffs.”

3 2.11 At all times material hereto, Defendant United States of America,
4 acting by and through the Bureau of Indian Affairs (hereafter “BIA”) in the
5 Department of the Interior, is a sovereign entity hereby sued pursuant to 28 U.S.C.
6 § 2674 for damages.

7 2.12 The Confederated Tribes of the Colville Reservation, a non-party, is
8 a federally recognized Indian tribe with the Colville Business Council as its
9 governing body. The Confederated Tribes occupy the Colville Reservation in
10 Eastern Washington.

11 2.13 The Confederated Tribes have self-determination contracts with the
12 BIA pursuant to the Indian Self-Determination and Education Assistance Act
13 (“ISDEAA”), as amended, 25 U.S.C. § 5321(a)(2) (a.k.a “638 contracts”¹)
14 regarding fire protection services and forestry services.

15 2.14 The Colville Tribal Federal Corporation (CTFC) is a tribal
16 corporation headquartered in Omak, Washington and with its principle place of
17 business in Washington. Upon information and belief, CTFC operates as an arm

18 ¹ A Reference to the Public Law Number of the ISDEAA, Pub. L. No. 93-
19 638.
20

1 of the Confederated Tribes that manages the Tribes' gaming and wood products
2 enterprises and provides revenue for the Tribes.²

3 2.15 Upon information and belief, CTFC is and at all times relevant to this
4 Complaint was the owner of the property housing the old Omak Mill.

5 2.16 Upon information and belief, the fire started and/or spread as a result
6 of the negligent and wrongful acts or omissions of one or more employees of the
7 Confederated Tribes and/or CTFC, acting within the scope of their employment
8 while carrying out the 638 contracts.

9 2.17 These claims are brought against the Defendant pursuant to 25 U.S.C.
10 § 5321 (note)³, which provides, as relevant,

11 With respect to claims resulting from the performance of
12 functions . . . under a [638] contract, . . . an Indian tribe, tribal
13 organization or Indian contractor is deemed . . . to be part of the
14 [BIA] . . . while carrying out any such contract or agreement and its
employees are deemed employees of the Bureau . . . while acting
within the scope of their employment while carrying out the contract
or agreement.

17 ² <https://www.colvilletribes.com/contact-ctfc>.

18 ³ Acts of Nov. 5, 1990, Pub. L. No. 101-512, § 314, 104 Stat. 1959; Nov.
19 11, 1993, Pub. L. No. 103-138, § 308, 107 Stat. 1416.

1 **III. JURISDICTION AND VENUE**

2 3.1 This Court has subject matter jurisdiction over this action. This is an
3 action arising under the Federal Tort Claims Act, which waives Defendant's
4 sovereign immunity and provides this Court with exclusive jurisdiction in this
5 matter. 28 U.S.C. § 1346(b).

6 3.2 Pursuant to 28 U.S.C. § 2401(b), prior to the commencement of this
7 action, Plaintiffs presented an administrative claim for damages to the Department
8 of the Interior and Bureau of Indian Affairs relating to the events and circumstances
9 complained of herein. Said claim was timely presented on or about August 23,
10 2022. The Department of the Interior and BIA denied Plaintiffs' claims on
11 February 23, 2023.

12 3.3 Venue is proper in the Eastern District of Washington pursuant to 28
13 U.S.C. § 1402(b) because all Plaintiffs reside in this District and the events giving
14 rise to the claims occurred in Okanogan County, Washington, in this District.

15 **IV. STATEMENT OF FACTS**

16 4.1 Plaintiffs hereby reallege and incorporate each and every allegation
17 as set forth in paragraphs 1.1–3.3 herein.
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19
20

1 4.2 Townsend Plaintiffs own and lease certain real property in Okanogan
2 County upon which they graze cattle and grow, among other crops, range land
3 (hereafter the “Townsend Property”).

4 4.3 The Townsend Property consists of approximately 8,269.25 acres
5 affected by fire, containing numerous improvements, including but not limited to
6 a house, outbuildings, fences, gates, sagebrush, crops, and many trees.

7 4.4 Upon information and belief, on or about September 7, 2020, the risk
8 of wildland fires was significant in Okanogan County.

9 4.5 Upon information and belief, on or about September 7, 2020,
10 moderate to significant winds were predicted in Okanogan County.

11 4.6 Upon information and belief, employees of the Confederated Tribes
12 and/or CTFC (hereinafter “tribal employees”) and/or BIA employees failed to
13 safely inspect, maintain, and monitor the smoldering slash pile on the old Omak
14 Mill property.

15 4.7 Despite actual knowledge of repeated safety concerns with this
16 chronically smoldering condition, and occasional small fire flare ups necessitating
17 extinguishment by nearby fire departments, CTFC tortiously failed to maintain the
18 site, allowing this condition to perpetuate.

4.8 As a direct result, in the early morning hours of September 7, 2020, predicted high NE winds carried burning embers from the long smoldering slash piles at the old Omak Mill to nearby dry grass fuels which erupted into a catastrophic wildfire.

Smoking Old Mill slash pile



Sept. 7, 2020 at 7:41 am



Sept. 7 2020 at 9:20 am

Sept. 7, 2020 at 9:42

4.9 The resulting fire swept southward, destroying thousands of acres of land and buildings, including land, equipment, and livestock owned by Claimants,

1 before allegedly merging with the Cold Springs Fire that was already burning in
2 Washington state. A near 180-degree reversal of the wind direction on the
3 following day led to the same fire destroying the Omak Mill.

4 4.10 The fire destroyed real and personal/corporate properties, including
5 timber, grazing, and farmland for numerous parcels of land owned and/or operated
6 by the Townsend Plaintiffs.



14 Townsend Ranch engulfed in flame

15 4.11 Under Washington statutory and common law, CTFC and its
16 agents/employees breached their duty to maintain the land (including the slash
17 pile) in a condition reasonably safe to the public (i.e., not likely to start wildfires).

18 4.12 Upon information and belief, before September 7, 2020, the United
19 States through the Department of Interior and BIA had entered into 638 contracts
20 with the Confederated Tribes of the Colville Reservation for Fire Protection

1 Services (Contract A20AV00075) and for Cooperative Forest Management
2 (Contract A20AV00089) of Colville tribal lands, including the old Omak Mill site.
3 The term of these contracts commenced on October 1, 2019 and ended on
4 September 30, 2022.

5 4.13 Contract A20AV00075 provided funding to the Confederated Tribes
6 for purposes of “providing essential firefighting and fire protection services” on
7 tribal lands.

8 4.14 Contract A20AV00089 provided funding to the Confederated Tribes
9 for purposes of administering a Cooperative Forestry Program in accordance with
10 Colville laws. This contract includes specific plans relating to Forestry, Forest
11 Administration (including oversight of a Cooperative Fire Management Program),
12 Forest Management Planning, Timber Sale Administration, Forest Development,
13 Forest Protection (including to “[m]onitor and provide corrective action to forest
14 stands impacted by wildfire . . . Actions may include prevention, suppression or
15 rehabilitation as need to address concerns/issues.”), and Woodlands Management.

16 4.15 Upon information and belief, the old Omak Mill property had been
17 used to deposit slash from the Confederation Tribes’/CTFC’s forestry and timber
18 operations, and as such, operations at the property fell within the provisions
19
20

1 Contract A20AV00089. Additionally, fire control and prevention operations fall
2 within the provisions of both 638 contracts referenced herein.

3 4.16 Upon information and belief, the smoldering slash pile was above and
4 below ground level and was a chronic ignition source for nearby grasses and other
5 fuels.

6 4.17 Upon information and belief, the slash pile at issue was neither
7 inspected nor adequately maintained to ensure full extinguishment or prevent
8 smoldering. As a result, the smoldering slash pile continued at times to emit smoke
9 and embers above ground, making it an extreme safety hazard to nearby property,
10 including that owned by plaintiffs.

11 4.18 Upon information and belief, before September 7, 2020, the CTFC
12 and BIA were warned multiple times by city of Omak officials and employees, as
13 well as tribal fire department officials and tribal members that the smoldering slash
14 pile posed an extreme risk of wildfires. Multiple requests for fire preventative
15 maintenance were ignored by one or more CTFC or BIA employees.

16 4.19 Upon information and belief, before September 6, 2020, the
17 Confederated Tribes, CTFC, and BIA were on notice that the National Weather
18 Service predicted potentially significant northeast winds to occur on September 6
19 and 7, 2020. The risk of ignition at the slash pile into adjoining dry grass and fuels
20

1 was obvious, but no measure of any type was made to prevent the wildfire that
2 occurred.

3 **V. CAUSES OF ACTION**

4 5.1 Plaintiffs hereby reallege and incorporate each and every allegation
5 as set forth in paragraphs 1.1–4.19 herein.

6 5.2 As used hereinafter, the term “Defendant” should be understood to
7 include all persons and entities for whom the United States of America is legally
8 liable, including the BIA and its employees, as well as the Confederated Tribes of
9 the Colville Reservation, the CTFC, and their employees acting within the scope
10 of their employment and carrying out 638 contracts.

11 5.3 Plaintiffs hereby assert each and every cause of action and claim in
12 equity support by the facts alleged in this Complaint. Without limitation, such
13 causes of action and claims in equity include each of the following.

14 **NEGLIGENCE**

15 5.4 Defendant wrongfully and recklessly failed to maintain the slash pile
16 on the old Omak Mill property, which ignited the fire and allowed the fire to escape
17 to other lands.

18 5.5 Because the activity was ultra-hazardous, Defendant is strictly liable
19 for any and all damages.
20

5.6 Subject to discovery in this matter, Defendant may have violated RCW 76.04.405, RCW 76.04.435, RCW 76.04.445, RCW 76.04.455, and RCW 76.04.760 which resulted in damages to Plaintiffs and their properties.

5.7 Defendant wrongfully injured and caused waste and damage to the lands, trees, homes, other structures, fences and other personal property and landscaping improvements of Plaintiffs.

TRESPASS

5.8 Plaintiffs are owners of real property entitled to exclusive, uninterrupted, and quiet use and enjoyment of their real property.

5.9 Defendant caused injury to trees on Plaintiffs' land in violation of RCW 64.12.030.

5.10 Defendant either intentionally and/or negligently allowed the fires it started to escape and trespass onto Plaintiffs' lands, causing trespass onto the real properties of Plaintiffs and otherwise violating Plaintiffs' right to exclusive, uninterrupted, and quiet use and enjoyment of their real property which trespass proximately caused damage to Plaintiffs and their property.

NUISANCE

5.11 Defendant violated RCW 7.48.120 and RCW 7.48.150 by unlawfully doing an act, or omitting to perform a duty, which act or omission annoyed, injured

1 and endangered the comfort, repose, health or safety of others, and which rendered
2 plaintiffs insecure in their use of their property, thereby creating an *actionable*
3 *nuisance*.

4 **VI. DAMAGES**

5 6.1 Plaintiff Townsend Ranch LLC is owned by the five Townsend
6 brothers: Edward, Nathan, William, Daniel, and Malcolm. A total of 7,555.25
7 acres of land owned by Townsend Ranch LLC were destroyed in the fire,
8 consisting of 2,247 acres of forest, 1,284 acres of crops, and 4,008 acres of
9 range/grazing land.

10 6.2 Plaintiff Townsend Brothers LLC is owned by Edward Townsend and
11 Nathan Townsend and lies adjacent to the property owned by Townsend Ranch
12 LLC. A total of 664 acres were destroyed in the fire, consisting of 509 acres of
13 forest and 135 acres of range/grazing land.

14 6.3 Plaintiff T-3 Ranch LLC is the operating entity that runs the Ranch
15 and is owned by Edward Townsend, Nathan Townsend, and William Townsend.
16 T-3 Ranch owns the machinery and cows and performs all of the operations. The
17 losses incurred by T-3 Ranch LLC includes, but is not limited to:

- 18 • Loss of machinery, equipment and feed;
- 19 • Loss of over 82 miles fencing and gates;

- Loss of structures, including a pumphouse, shed and barn;
- Livestock losses and damages
- Business interruption;
- Fire cleanup and restoration costs;
- Damages to roads;
- Post-fire weed control; and
- Sagebrush restoration.

6.4 All of the Townsend brothers, in addition to the losses described above and the thousands of acres of tree losses, have incurred costs for fire cleanup in their time.

6.5 William Townsend, who was living in a homestead on neighboring property that was completely destroyed by the fire, lost all of his personal belongings.

6.6 The Estate of David Townsend owned an additional 19 acres of separate property used for grazing and incurred fencing damages and fire cleanup costs.

6.7 Malcolm and Kelly Townsend separately own an additional 30 acres of property that was damaged in fire, consisting of 5 acres of forest, and 25 acres of range. They lost all fencing on this property and a shed.

1 6.8 As a direct and proximate result of Defendants' violation of RCW
2 7.48.120 and/or RCW 7.48.150, and tortious conduct, including negligence and
3 strict liability, plaintiffs have incurred damages to their real and personal property
4 and are entitled to compensation for these damages including, but not limited to,
5 loss of trees, damage to homes, fences and other personal property, landscaping
6 improvements, loss of crops, loss of livestock, loss of property value, damage to
7 the natural grasses and plants, other damages to natural soil nutrients, erosion to
8 land, loss of natural habitat for wildlife, inconvenience and substantial costs for
9 labor associated with removal of the burned trees and restoration of foliage, trees
10 and other damaged or destroyed property.

11 6.9 As a direct and proximate result of Defendant's violation of RCW
12 7.48.120 and/or RCW 7.48.150, and tortious conduct, including negligence and
13 strict liability, plaintiffs have incurred mental anguish and emotional distress and
14 will continue to incur disruption of their business, substantial out-of-pocket
15 expenses and valuable personal labor in dealing with issues relating to these fires
16 and are entitled to compensation for these expenses and their time.

17 6.10 Plaintiffs are entitled to full restoration of their properties and all other
18 remedies in accordance with caselaw and RCW 7.48.120 and/or RCW 7.48.150,
19 RCW 76.04.730, RCW 76.04.750 and potentially RCW 76.04.760.
20

1 6.11 Plaintiffs are entitled to treble damages for all timber trespass in
2 accordance with RCW 64.12.030.

3 6.12 Plaintiffs are entitled to prejudgment interest on all out-of-pocket
4 expenses directly and proximately caused by Defendant's negligence and/or strict
5 liability.

6 6.13 Plaintiffs are entitled to costs and disbursements incurred herein.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiffs pray for damages and relief in the amount of
9 approximately Forty-Seven Million, Dollars (\$47 Million) in accordance with the
10 tort claim filed on August 23, 2022, as follows:

- 11 1. For an award of damages against Defendant, compensating plaintiffs
12 for their real and personal property damages, costs of restoration and
13 all consequential damages, in an amount to be proven at trial;
- 14 2. For an award of damages against Defendant, compensating plaintiffs
15 for any past and future related out-of-pocket expenses, in an amount
16 to be proven at trial;
- 17 3. For an award of damages against Defendant, compensating plaintiffs
18 for their past and future mental anguish and emotional distress, in an
19 amount to be proven at trial;

- 1 4. For an award of damages against Defendant, compensating plaintiffs
2 for the loss of use and enjoyment of their properties, in an amount to
3 be proven at trial;
- 4 5. For an award of damages against Defendant, compensating plaintiffs
5 for nuisance and/or trespass to the extent each is not recoverable
6 under other theories of liability, in an amount to be proven at trial;
- 7 6. For an award of attorneys' fees against Defendant for the attorneys'
8 fees incurred by plaintiffs herein, in an amount to be proven at trial;
- 9 7. For an award of prejudgment interest on all out-of-pocket expense
10 directly and proximately caused by Defendant's negligence and
11 strict liability, in an amount to be proven at trial;
- 12 8. For an award against Defendant, compensating each plaintiff for
13 their litigation-related costs and disbursements incurred herein, in an
14 amount to be proven at trial; and
- 15 9. For such other and further relief as the Court deems just and
16 equitable.

17 DATED this 12th day of June, 2023.

18 EYMANN ALLISON JONES P.S.

19 /s/ Richard C. Eymann

20 RICHARD C. EYMANN, WSBA #7470

 Attorneys for Plaintiffs